

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 497 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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FEZZULLABHAI ABDULKARIM

Versus

ASMABAI WD/O HUSENIBHAI C RUPAWALA

Appearance:

MR PB MAJMUDAR for Petitioner

MS ROOPAL R PATEL for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 04/07/97

ORAL JUDGEMENT :

The challenge in the Revision Application under section 29(2) of the Bombay Rent Control Act (hereinafter referred to as "the Act" for brevity) is against the judgment and decree regarding eviction in favour of the respondents - original plaintiffs landlords and against the petitioner - original defendant, tenant on the ground of breach of one of the conditions of sec.12(3)(b) of the Act, namely, non payment of rent regularly during the pendency of Regular Civil Appeal No.96 of 1978 reversing the decree of the trial court dismissing the suit for possession and fixation of standard rent.

2. The aforesaid appeal came to be filed at the instance of the landlords and the ejectment decree came to be passed on the aforesaid grounds on 28th December 1979. It is the settled proposition of law that the provisions of sec.12(3)(b) of the Act are mandatory and one of the requisite mandatory conditions is to pay or deposit rent regularly during the period of the suit and appeal. In the present case, the appellate court has unequivocally found that the rent was not paid during the period of appeal, much less regularly. This proposition was not disputed before the appellate court and rightly also not disputed in this Revision. With the result right to seek protection was lost by the tenant. Since this is a clear case where this Court has no hesitation in finding that the Revision against the impugned

judgment and decree regarding ejection on the ground of non payment of rent and non compliance of one of the requisite conditions under sec.12(3)(b) of the Act, no further elaborate discussion would arise.

3. In view of the facts and circumstances of the impugned judgment and the decree of eviction against the petitioner/ original tenant in respect of the building bearing Municipal Ward No.3, situated in Navapura, Pathanwad, Surat, which is referred in the judgments of the courts below as 'demised premises' is required to be affirmed being this Revision Application meritless.

4. Learned advocate appearing for the petitioner/ original defendant-tenant has requested for two year time to enable the petitioner-tenant to find out other suitable accommodation and vacate the premises. In view of the facts and circumstances, time to vacate and honour the decree is granted for a period upto 31st July 1998 on usual terms and conditions which shall also include the following conditions :

- (i) The petitioner-tenant shall deposit full arrears of rent, if any, at this stage, on or before 5th August 1997.
- (ii) An undertaking shall be filed within four weeks from today to the effect that the tenant is in possession of the demised premises and the tenant shall not part with, transfer or alienate in any manner, form, whatsoever the actual possession.
- (iii) The undertaking shall include that peaceful and vacant possession shall be handed over on or before 31st July 1998.
- (iv) The above undertaking shall also include that in case of non observance or failure to perform one or more of the aforesaid conditions, the time granted for eviction shall cease to operate and it will be open for the landlords to execute the decree forthwith without waiting for the aforesaid time.
- (v) The standard rent fixed by the Court in the form of mesne profit should regularly be paid during the above period.

5. On the facts and in the circumstances, the Revision Application stands disposed of. Rule is discharged. No order as to costs.

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